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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,349	10/30/2003	Todd Michael Wenger	H1799-00225	7517

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EXAMINER

LEO, LEONARD R

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,349

Applicant(s)

WENGER ET AL.

Examiner

Leonard R. Leo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 16, 17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16, 17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

This application is a Continuation of serial no. 10/081,703, now U.S. Patent No. 6,802,362. Claims 10-15 and 18 are cancelled, and claims 1-9, 16-17 and 19-21 are pending.

Claim Objections

Claims 20-21 are objected to because of the following informalities: The preamble of the dependent claims recites "The fin", whereas independent claim 19 recites "A heat pipe assembly." Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 4-8 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-6 of U.S. Patent No. 6,802,362. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application claims are broader in scope than the patent claims.

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The patent claims all the limitations of the application claims. The “pair of slots” in the patent claim reads on the “plurality of slots” in the application claim, where the slots in the “curved portions” in the patent claims is narrower in scope than the application claims.

Claim 16 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,802,362. Although the conflicting claims are not identical, they are not patentably distinct from each other because the application claims are broader in scope than the patent claims.

The patent claims all the limitations of the application claims, where the “pair of slots” in the patent claim reads on the “plurality of slots” in the application claim.

Claims 1-3 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,802,362 in view of Hersey.

The patent claims all the claimed limitations of the application except an embossed surface.

Hersey discloses a fin comprising a plate 14 having a hole defined by collar portion 22 and embossments 28 for the purpose of guiding the airflow to improve heat exchange (column 2, lines 45-60).

Since the patent and Hersey are both from the same field of endeavor and/or analogous art, the purpose disclosed by Hersey would have been recognized in the pertinent art of the patent.

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in the patent embossments for the purpose of guiding the air flow to improve heat exchange as recognized by Hersey.

Regarding claim 17, Hersey discloses bent edge 24.

Claims 20-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-6 of U.S. Patent No. 6,802,362 in view of Hersey, as applied to claims 1-3 and 17 above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (Figures 7-8) or Ritter. Regarding claim 3, the recitation of “formed by drawing” is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See MPEP 2113.

Claims 1-3 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Przyborowski. Regarding claims 2 and 16, Przyborowski discloses a pair of slots 21 between collars 19. Regarding claim 3, the recitation of “formed by drawing” is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See

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MPEP 2113. Regarding claim 17, Przyborowski discloses bent edges spaced away from the collars.

Claim 16 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Briscoe et al (Figure 3).

Claims 16-17 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Shen.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-8 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawara in view of Briscoe et al.

Ogawara discloses all the claimed limitations except a collar portion.

Briscoe et al discloses a fin comprising a plate 15 having a hole defined by collar portions 16 for the purpose of securing the fin to the pipe 14.

Since Ogawara and Briscoe et al are both from the same field of endeavor and/or analogous art, the purpose disclosed by Briscoe et al would have been recognized in the pertinent art of Ogawara.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Ogawara collar portions for the purpose of securing the fin to the pipe as recognized by Briscoe et al.

Regarding claims 6-7, the recitation of “formed by stamping” and formed by drawing” is considered to be a method limitation in an apparatus claim, which bears no patentable weight in this instance. See MPEP 2113. However, Briscoe et al discloses the collars are stamped.

Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogawara in view of Briscoe et al as applied to claims 4-8 and 19 above, and further in view of Hersey, as applied to claims 1-3 and 17 above in the double patenting rejection.

Conclusion

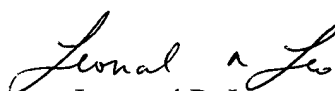
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard R. Leo whose telephone number is (571) 272-4916. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leonard R. Leo
Primary Examiner
Art Unit 3753

May 30, 2005